

Employee [Share] Ownership Trusts

What are they and where are the traps.

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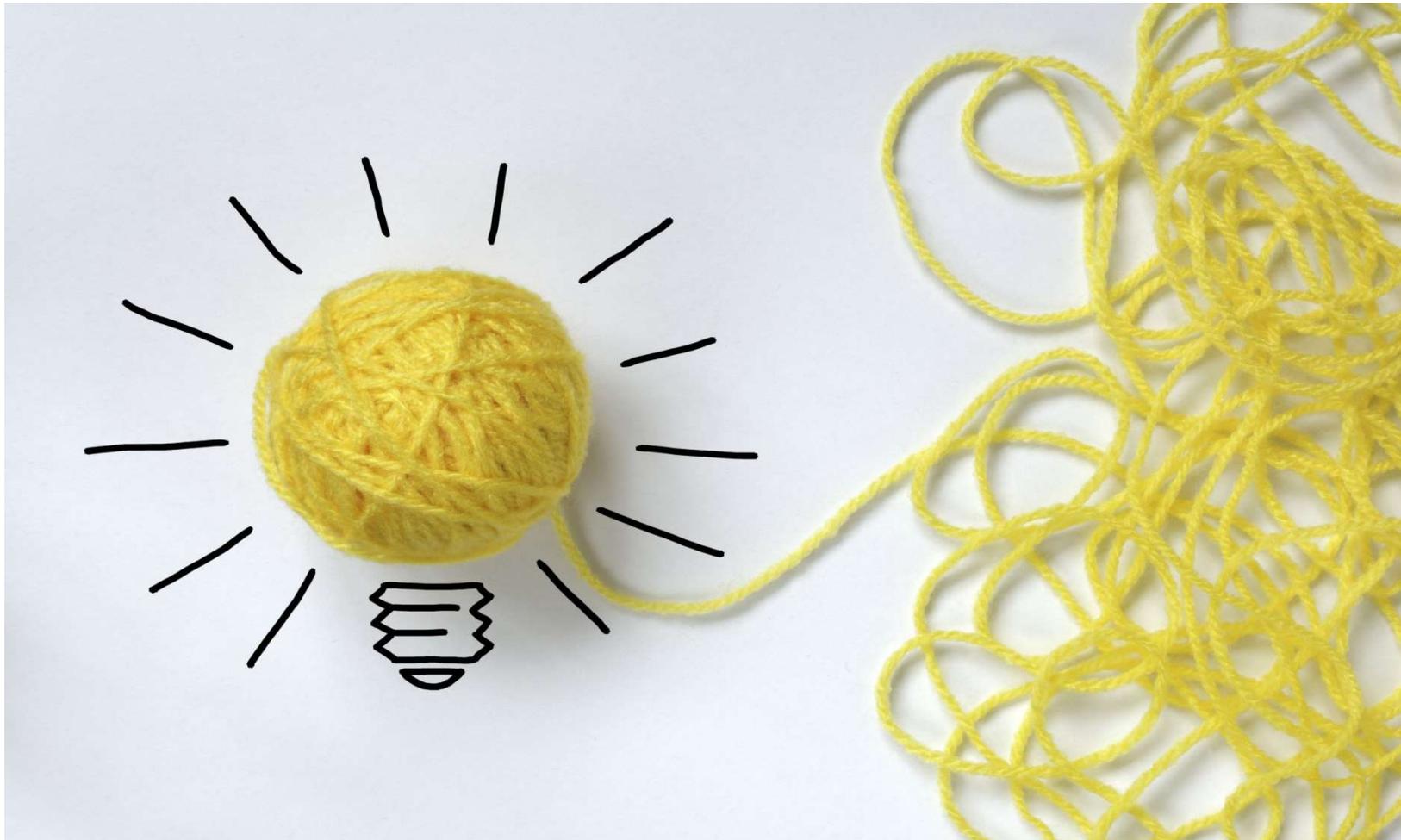
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The challenging client

- I don't want to pay any tax
- I want my staff to work harder
- I don't want to give up control

What to do?



So what to do

- 1) Create an Employee [Share] Ownership Trust
- 2) Transfer 51%+ of the company to the ESOT
- 3) Only pay stamp duty

Employee [Share] Ownership Trust

- Very similar in concept to an Employee Benefit Trust
- Use a company limited by guarantee as the Trustee
- But have the Founders as the Trustee Directors plus
 - Independent Trustee Director?
 - [Employee Representative???

Trust Traps

- A. The ESOT must control the trading company (hence 51%+)
- B. No provisions exist whereby ESOT can lose control
- C. Funding
- D. Many hats!
- E. All employee benefit (two trusts)

Share Transfer

- Arms' length transaction
- ESOT buys 51% of Trading Company for 51% of the market value of the company
- BDO Quarterly report (EBITDA x 10.1)
- But how fund?
- Bank finance (but what about event of default?)
- What if over pay?
 - Employment income tax? Breach of trust duties?

Do you really only pay stamp duty?



Do you really only pay Stamp Duty?

- (can avoid stamp duty but causes bigger tax bill)
- Is sale to ESOT exempt from CGT?
- If self-funded, what about deferred consideration?
- Where does the ESOT get its money
- Simple dividend???? (No capital contribution)
- HMRC clearance
- ESOT must register with HMRC if the trustees become liable to pay UK taxes in a given year

6 months later

- employee bonuses of up to £3,600
- ESOT sells the Company
- Claw back of saved CGT
- Who suffers? Who decides?
- Distribute money to staff – PAYE

5 years later

- employee bonuses of up to £3,600 pa x 5 = £18,000
- ESOT sells the Company
- Base cost = c. £zero
- Who suffers? Who decides?
- Distribute money to staff – PAYE

Questions?



Caveat

- Tax is tricky and the above and accompanying notes are an introduction only. Advice needs to be taken before acting or omitting to act.

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